

1 ROB BONTA
Attorney General of California
2 ANYA M. BINSACCA
Supervising Deputy Attorney General
3 KRISTIN A. LISK
Deputy Attorney General
4 State Bar No. 315994
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 510-3916
6 Fax: (415) 703-5480
E-mail: Kristin.Liska@doj.ca.gov
7 *Attorneys for Attorney General Rob Bonta, in his*
official capacity

8
9 IN THE UNITED STATES DISTRICT COURT
10 FOR THE NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION
12

13 **VISHAL SHAH and JAYDEN KIM,**
14 **individually and on behalf of all others**
similarly situated,

15 Plaintiff,

16 v.

17 **FANDOM, INC.,**

18 Defendant.
19
20
21
22
23
24
25
26
27
28

Case No. 3:24-cv-01062-RFL

**ATTORNEY GENERAL ROB BONTA'S
MOTION TO EXTEND THE TIME TO
INTERVENE UNDER RULE 5.1**

Dept: 15
Judge: The Honorable Rita F. Lin
Trial Date: Not scheduled
Action Filed: 2/21/2024

Pursuant to Federal Rules of Civil Procedure 5.1(c) and 6(b)(1)(A), Attorney General Rob Bonta, in his official capacity, moves to extend the time to intervene in this action pursuant to Rule 5.1(c) from January 17, 2025 to April 17, 2025, 30 days after the parties' forthcoming joint status report regarding their mediation efforts is due. Both plaintiffs and defendant have consented to this motion.

BACKGROUND

This suit arises under the California Invasion of Privacy Act ("CIPA"). Plaintiffs allege that defendant Fandom, Inc., installed trap and trace devices or pen registers on their computer browsers in violation of California Penal Code section 638.51. On November 18, 2024, pursuant to Federal Rule of Civil Procedure 5.1(a), defendant Fandom, Inc. filed a notice with this Court stating that this action draws into question the constitutionality of a state statute and served that notice on the California Attorney General's Office. *See* ECF No. 41. Specifically, Fandom contends that Penal Code sections 638.50 and 638.51 are invalid under the First Amendment. *See* Answer, Fifteenth Affirmative Defense [ECF No. 40]; Joint Case Management Statement at 3 [ECF No. 49].

LEGAL STANDARD

Under Rule 5.1(a), a "party that files a pleading, written motion, or other paper drawing into question the constitutionality of a . . . state statute must promptly (1) file a notice of constitutional question stating the question and identifying the paper that raises it if . . . a state statute is questioned and the parties do not include the state, one of its agencies, or one of its officers or employees in an official capacity; and (2) serve the notice and paper . . . on the state attorney general." The state attorney general has 60 days following the notice's filing to intervene in the matter "[u]nless the court sets another time." Fed. R. Civ. P. 5.1(c). The advisory notes make clear that under Rule 5.1(c), the court may extend the time to intervene on its own or upon motion from the state attorney general.

Additionally, under Rule 6(b)(1)(A), a court may, for good cause, extend the time for an act to be done upon motion before the original time to do that act expires. "[R]equests for extension for time made before the applicable deadline has passed should 'normally . . . be granted in the

1 absence of bad faith on the part of the party seeking relief or prejudice to the adverse party.’’
2 *Ahanchian v. Xenon Pictures, Inc.*, 624 F.3d 1253, 1259 (9th Cir. 2010) (citation omitted).

3 **ARGUMENT**

4 Under Rule 5.1(c), the Attorney General has 60 days following the filing of the notice of
5 constitutional question to intervene in this matter. Since the notice of constitutional question here
6 was filed on November 18, 2025, the Attorney General currently has until January 17, 2025 to
7 intervene. However, on January 7, 2025, the parties to this suit agreed to undergo mediation in an
8 attempt to resolve this matter. *See* ECF No. 49. On January 10, this Court postponed further
9 deadlines, and directed the parties to file a joint status report regarding mediation on March 18,
10 2025. *See* ECF No. 50.

11 In light of the parties’ attempt to mediate this case, good cause exists to extend the period
12 of time for the Attorney General to intervene in this matter. Should the parties be able to
13 successfully resolve this suit in mediation, this Court will not need to opine on the
14 constitutionality of the challenged state statutes, nor will there be any need for the Attorney
15 General to consider intervention in this matter to defend those statutes. Thus, extending the
16 deadline to intervene until the outcome of mediation is known will further the efficient resolution
17 of this case. *See Mockeridge v. Alcona Cnty. by Bd. Of Commissioners*, 670 F. Supp. 3d 434, 436-
18 437 (E.D. Mich. 2023) (extending time for Michigan to intervene under Rule 5.1 when pending
19 motions would resolve the case without requiring resolution of a constitutional challenge to a
20 state statute). Nor will either party suffer prejudice from this extension of time given that this
21 case has not yet moved beyond the initial stages into discovery or merits proceedings at this time.

22 ///

23 ///

24 ///

CONCLUSION

For the foregoing reasons, the Attorney General moves to extend the time for him to intervene in this matter under Rule 5.1 until 30 days after the parties file their joint status report due March 18, 2025, through April 17, 2025.

Dated: January 14, 2025

Respectfully submitted,

ROB BONTA
Attorney General of California
ANYA M. BINSACCA
Supervising Deputy Attorney General

/s/ Kristin Liska

KRISTIN A. LISKA
Deputy Attorney General
*Attorneys for Attorney General Rob Bonta,
in his official capacity*

CERTIFICATE OF SERVICE

Case Name: ***Shah, Vishal, et al. v. Fandom, Inc.***

Case No.: **3:24-cv-01062-RFL**

I hereby certify that on January 14, 2025, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

- 1. ATTORNEY GENERAL ROB BONTA’S MOTION TO EXTEND THE TIME TO INTERVENE UNDER RULE 5.1**
- 2. DECLARATION OF KRISTIN A. LISKA IN SUPPORT OF ATTORNEY GENERAL’S MOTION TO EXTEND**
- 3. [PROPOSED] ORDER GRANTING ATTORNEY GENERAL ROB BONTA’S MOTION TO EXTEND THE TIME TO INTERVENE UNDER RULE 5.1**

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished electronically by the Court’s CM/ECF system.

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct.

Executed on January 14, 2025, at San Francisco, California.

Vanessa Jordan
Declarant

Vanessa Jordan
Signature